

1 KEVIN A. BOVE (149675)
2 Attorney at Law
3 117 North Broadway
4 Escondido, CA 92025
5 (760) 735-2900

6 Attorney for Plaintiff
7 Adrian Reyes-Cruz

FILED

2008 JAN 24 PM 3:23

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY KNH DEPUTY

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ADRIAN REYES-CRUZ,

11 Plaintiff,

12 v.

13 EMILIO GONZALEZ, Director,
14 United States Citizenship & Immigration Services;
15 and, PAUL PIERRE, Director, San Diego District
16 Office, United States Citizenship & Immigration
17 Services,

18 Defendants.

Case No.

08 CV 0149 DMS LSP

COMPLAINT FOR RELIEF
IN THE NATURE OF MANDAMUS

19 Adrian Reyes-Cruz ("Plaintiff") hereby alleges as follows:

- 20 1. Plaintiff resides within the jurisdiction of this court and is an applicant for lawful permanent
21 residence in the United States under the Immigration & Nationality Act, 8 U.S.C. § 1101 et
22 seq.
- 23 2. Defendant Emilio Gonzalez is the Director of United States Citizenship & Immigration
24 Services ("USCIS"), an agency of the United States Government, and is sued in this official
25 capacity only.
- 26 3. Defendant Paul Pierre is the Director of the San Diego District Office of United States
27 Citizenship & Immigration Services, an agency of the United States Government, and is
28 sued in this official capacity only.

4. The court has jurisdiction of this matter pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1361, 28 U.S.C. § 1651, 5 U.S.C. § 701 et seq. and 28 U.S.C. § 2201 et seq. and relief is requested pursuant to these statutes.

CAUSE OF ACTION

(Failure to Adjudicate I-485 Application to Adjust Status)

5. On December 12, 2006, Plaintiff appeared before USCIS San Diego after filing an I-485 application to adjust his status to that of a lawful permanent resident of the United States.¹
6. USCIS has still not adjudicated the I-485 application.
7. Defendants' failure to adjudicate the I-485 application is not in accordance with law.
8. Plaintiff is damaged by Defendants' failure to act in accordance with law inasmuch as he is being denied lawful permanent resident status in the United States.

WHEREFORE, Plaintiff respectfully requests that the court enter judgment as follows:

1. That Defendants be ordered to adjudicate the aforementioned I-485 application;
2. For reasonable attorneys fees and costs; and
3. Granting such other and further relief as the court deems just and proper.

DATED: January 24, 2008



KEVIN A. BOVE
Attorney for Plaintiff
Adrian Reyes-Cruz

¹ Exhibit A (USCIS Interview Notice).



U.S. Department of Homeland Security

Citizenship and Immigration Service
880 Front Street
San Diego, CA 92101

KEVIN A. BOVE
REF: ADRIAN REYES CRUZ
117 N. BROADWAY
ESCONDIDO, CA 92025

File: 75 693 737
Date: November 29, 2006

Please arrive at the office location shown below 15 minutes prior to your scheduled appointment time. IF you fail to respond to this request without prior notification to the Service, your application/petition WILL be deemed abandoned and terminated/denied.

OFFICE LOCATION	1261 THIRD AVE. SUITE A CHULA VISTA, CA 91911
DATE AND HOUR (SEE NOTE BELOW)	December 12, 2006 at 7:45 AM
ASK FOR	District Adjudications Officer
REASON FOR APPOINTMENT	Application for Adjustment of Status This interview may be video taped.
BRING WITH YOU:	<p>◆ PETITIONER <u>MUST</u> BE PRESENT AT THE INTERVIEW.</p> <p>◆ Bring documents listed on reverse of this letter.</p> <p>◆ If you do not speak English, bring a translator.</p>

WARNING: If you are missing some of the documentation requested on the reverse of this letter, your case cannot be completed and it may require an additional interview

I am unable to keep this appointment because:

Very truly yours,

DEBRA ROGERS
DISTRICT DIRECTOR

Signature:

Date:

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ADRIAN REYES-CRUZ

San Diego

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

KEVIN A. BOVE (149675)
117 N. Broadway
Escondido CA 92025 (760) 735-2900

DEFENDANTS

EMILIO GONZALEZ et al.

2008 JAN 24 PM 3:24

County of Residence of First Listed

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

DEPUTY

'08 CV 0149 DMS LSP

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

MANDAMUS 28 USC 1361

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY None

JUDGE

DOCKET NUMBER

DATE

FOR OFFICE USE ONLY

RECEIPT # 146833

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

146833 - BH

**January 24, 2008
15:26:47**

Civ Fil Non-Pris

USAO #: 08CV0149 CIVIL FILING

Judge.: DANA M SABRAW

Amount.:

\$350.00 CK

Check#: BC# 3657

Total-> \$350.00

FROM: REYES-CRUZ V. GONZALEZ ET AL
CIVIL FILING